

AGREEMENT FOR REGISTRATION AND PAYMENT OF MICHIGAN BUSINESS TAXES

THIS AGREEMENT is made and entered into by and between _____ (hereinafter the "Company"), and the Michigan Department of Treasury (hereinafter the "Department").

WHEREAS, it is the statutory duty of the Department to enforce and uphold the Michigan Use Tax Act, MCL §205.91 et seq.; and

WHEREAS, the Company is a nonfiler for the tax being disclosed and has a filing responsibility under nexus standards issued by the Department after December 31, 1997; and

WHEREAS, pursuant to MCL §205.30c, the Department may enter into voluntary disclosure agreements with qualified taxpayers under designated terms and conditions; and

WHEREAS, the Company wishes to voluntarily come forward to achieve certainty and predictability with Michigan as to its tax status in Michigan;

NOW THEREFORE, the Company and the Department, in consideration of the mutual promises and benefits specified herein, hereby agree as follows:

1. The Company's Registration, Collection, Filing, and Remittance Responsibilities

- a. Use Tax Registration. The Company shall register with the Department effective [date], to remit use tax on all tangible personal property or sales subject to the Michigan use tax, MCL §205.91 et seq.
- b. Use Tax Collection, Filing and Remittance. The Company shall begin collecting and remitting Michigan use tax for **all orders accepted and all sales made** on or after [date]. The Company shall comply with the use tax provisions of MCL §205.91 et seq.
- c. Use Tax Filing and Remittance. The Company shall begin remitting Michigan use tax for **all tangible personal property used, stored or consumed in the State of Michigan**, if any, by the Company or any of its employees or representatives on or after [date]. The Company shall comply with the use tax provisions of MCL §205.91 et seq.
- d. Use Tax Remittance for Lookback Period. The Company shall, within thirty (30) days of the execution of this Agreement, determine the amount of use tax due for **all orders accepted and all sales made** for tax periods [lookback period], and file a use tax spreadsheet on no less than a quarterly basis along with taxes and interest due and owing under such spreadsheet. The Company shall comply with the use tax provisions of MCL §205.91 et seq.

- e. Use Tax Remittance for Lookback Period. The Company shall, within thirty (30) days of the execution of this Agreement, determine the amount of use tax due for **all tangible personal property used, stored or consumed in the State of Michigan**, if any, by the Company or any of its employees or representatives for tax periods [*lookback period*], and file a use tax spreadsheet on no less than a quarterly basis along with taxes and interest due and owing under such spreadsheet. The Company shall comply with the use tax provisions of MCL §205.91 et seq.
- f. Audit of Prior Periods. The Company agrees to make its books and records for periods prior to [*date*] available to the Department upon reasonable notice for the purpose of verifying the factual representations made by the Company in this Agreement, determining the Company's tax liability for the lookback period, or to determine another person's tax liability.

2. Departmental Waiver of Tax, Interest, and Penalties

So long as the Company fully and timely performs all duties under this Agreement and provided that facts established are not materially different from the facts disclosed by the Company in Section 4 of this Agreement, the Department hereby agrees:

- a. Not to assess the Company for any potential use tax liabilities, including penalties and interest, for all periods prior to [*date*].
- b. Not to assess the Company for any penalties relating to the lookback period identified in Sections 1.d. and 1.e. of this Agreement.
- c. Not to bring any criminal action against the Company for failure to report, collect or remit any use tax which may be allegedly due and owing by the Company for any periods prior to [*date*].

3. The Company Waiver of Refunds for Prior Years

The Company agrees not to file a protest or seek a refund of taxes paid to this State for the lookback period based on issues disclosed in this Agreement or based on the Company's lack of nexus or contacts with this State. This waiver shall not be construed as a waiver of rights to seek a refund on any other basis including, without limitation, refunds based on computational errors or clerical errors.

4. The Company Representations

The Company makes the following representations:

- a. The Company has fully disclosed all relevant and material facts in order to induce the Department to enter into this Agreement.

- b. The Company's representations contained in this Agreement are true and correct.
- c. Each of the Company's representations, recitals and terms contained in this Agreement were made for the purpose of inducing the Department to execute this Agreement.
- d. The Company affirms that it has had no previous contact by the Department or its agents including the Multistate Tax Commission regarding the tax covered by this Agreement. For purposes of this section, previous contact as defined in MCL 205.30c. (11)(d) means any notification of an impending audit, review, notice of intent to assess, assessment or subpoena. After June 30, 1999 previous contact will also include a final letter of inquiry.
- e. The Company affirms that it is not currently under audit by the Department or under investigation by the department of state police, department of the attorney general, or any local law enforcement agency regarding the tax covered by this Agreement.
- f. The Company affirms that it is not currently the subject of any civil action or criminal prosecution involving the tax covered by this Agreement.
- g. The Company affirms that it is not incorporated or domiciled in Michigan.
- h. The Company affirms that no actual collection of use tax has been made prior to [date] that would give rise to unjust enrichment.
- i. The Company [general description of business].

5. Department Representations

- a. The Department shall keep this Agreement confidential and shall not disclose any of the terms and conditions set forth herein to any tax authorities of any state or governmental authority or with any person except as allowed by exchange of information agreements. The Department shall not exchange information with other states regarding the Company unless specifically requested by other states.
- b. The execution of this Agreement by the Department does not constitute a determination or assessment of potential use tax liability. The Department enters into this Agreement under the authority of MCL §205.30c.
- c. Each of the Company's representations, recitals and terms contained in this Agreement are material and have been relied upon by the Department in determining whether to execute this Agreement.

6. Remedy for Misrepresentation

Any material misrepresentation of the facts set forth herein relating to the Company's current activity in Michigan will render this Agreement null and void and of no effect. A change of activities or operations of the Company subsequent to the effective date of this Agreement shall not be deemed a material misstatement of facts or have any effect upon the validity of this Agreement.

7. Miscellaneous

- a. Legal Authority. Each of the Company and the Department represent and warrant that it has the legal authority to enter into this Agreement; that the person executing this Agreement on its behalf is authorized to do so; and that this Agreement shall be binding and enforceable in accordance with its terms when duly executed and delivered by all parties.
- b. Multiple Copies of this Agreement. The parties shall execute one copy of this Agreement for each party. The Department shall maintain the original. A true and accurate copy of an original, certified by the Department, shall be treated for all purposes as an original of this Agreement.
- c. Limitations. Notwithstanding any provision contained herein to the contrary, this Agreement is limited solely to use tax for the periods specified herein. This Agreement is a negotiated agreement for use tax and does not affect the Company's past, present, or future rights, duties, obligations, or liabilities relating to any other taxes.
- d. Modification and Amendment. This Agreement may only be modified or amended by mutual agreement of the Company and the Department. Any such modification must be in writing and executed by each party.
- e. Notices. Any notices required under this Agreement shall be in writing.
- f. Jurisdiction, Venue, and Interpretation. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Michigan, and any dispute arising with respect thereto shall be determined by the Michigan Court of Claims located in Lansing, Michigan, subject to the right of either party to seek applicable review.
- g. Agreement Signing. This Agreement must be signed by the person subject to this Agreement or his, her, or its lawful representative, and returned to the Department by *(date)*, otherwise this Agreement will expire.